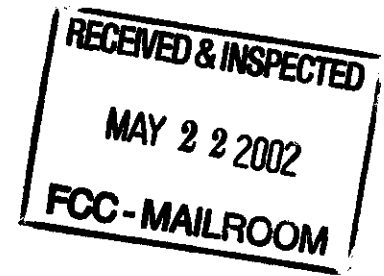


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Joint Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc.,)	CC Docket No. 02-35
And BellSouth Long Distance, Inc for)	
Provision of In-Region, InterLATA Services)	
In Georgia and Louisiana)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 2002

Released: May 15, 2002

By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. On February 14, 2002, BellSouth Corporation and its subsidiaries, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed this application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA service originating in the states of Georgia and Louisiana. Although BellSouth initially filed for in-region, interLATA authority for the states of Georgia and Louisiana on October 2, 2001,² that application was subsequently withdrawn by

¹ We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act or the Act. See 47 U.S.C. §§ 151 *et seq.* We refer to the Telecommunications Act of 1996 as the 1996 Act. See Telecommunications Act of 1006, Pub. L. No. 104-104, 110 Stat. 56 (1996).

² See *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the States of Georgia and Louisiana*, CC Docket No. 01-277 (filed October 2, 2001) (BellSouth GALA I (continued....))

BellSouth. We grant BellSouth's application in this Order based on our conclusion that BellSouth has taken the statutorily required steps to open its local exchange markets in Georgia and Louisiana to competition.

2. We wish to acknowledge the effort and dedication of the Georgia Public Service Commission (Georgia Commission) and the Louisiana Public Service Commission (Louisiana Commission), which have expended significant time and effort overseeing BellSouth's implementation of the requirements of section 271. The Georgia and Louisiana Commissions conducted proceedings concerning BellSouth's section 271 compliance with opportunities for participation by interested third parties. Both commissions adopted a broad range of performance measures and standards, as well as Performance Assurance Plans designed to create a financial incentive for post-entry compliance with section 271. In addition, the Georgia Commission provided for extensive third-party testing of BellSouth's operations support systems (OSS) offerings. As the Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purpose of the Act serve a vitally important role in the section 271 process.³ We commend both states for their enormous time and effort in developing this application.

3. We also commend BellSouth for the significant progress it has made in opening its local exchange market to competition in Georgia and Louisiana since the Commission last reviewed its application.⁴ BellSouth has implemented several improvements to its OSS which respond to previous Commission concerns identified on the record of BellSouth's earlier application. Additionally, BellSouth states that competitive local exchange carriers (competitive LECs) provide local service to some 828,281 lines on a facilities basis in Georgia, and to some 155,179 lines on a facilities basis in Louisiana. BellSouth also states that over one-third of all competitive LEC-served lines in BellSouth's Georgia service area and over 20 percent of competitive LEC-served lines in BellSouth's Louisiana service area are provisioned using unbundled local loops and unbundled network elements platform (UNE-P) provided by

(Continued from previous page)

Application); see *Comments Requested on Application by BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the States of Georgia and Louisiana* (CC Docket No. 01-277), Public Notice, DA No. 01-2286 (rel. October 2, 2001).

³ See, e.g., *Application of Verizon New York Inc., Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, FCC 01-208, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*).

⁴ See *BellSouth GALA I Application*; see also, *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599 (1998) (*Second BellSouth Louisiana Order*); *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 6245 (1998) (*BellSouth Louisiana Order*).

BellSouth. In addition, as of December 2001, competitors have acquired and placed into use more than 80,000 loops in Georgia and more than 19,000 loops in Louisiana. There is also an active resale market in Georgia and Louisiana. BellSouth states that it provides 84,450 resold local exchange lines, including 64,929 residential lines and 19,521 business lines in Georgia. In Louisiana, BellSouth provides 71,383 resold local exchange lines, including 58,423 residence lines and 12,960 business lines. These results, in addition to the significant progress BellSouth has made in improving its OSS, show that BellSouth has made extensive efforts to open its local exchange markets in compliance with the requirements of the Act.⁵

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service. Congress provided for Commission review of BOC applications to provide such service in consultation with the affected state and the Attorney General.⁶

5. We rely heavily in our examination of this application on the work completed by the Georgia and Louisiana Commissions. On May 7, 2001, the Georgia Commission initiated a proceeding to review BellSouth's satisfaction of the requirements necessary to provide in-region, interLATA service in Georgia.⁷ After conducting this proceeding, which was open to participation by all interested parties, the Georgia Commission determined "that BellSouth had

⁵ *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Authorization Under Section 271 To Provide In-Region, InterLATA Service in the States of Georgia and Louisiana*, CC Docket No. 02-35 (filed February 14, 2002) (BellSouth GALA II Application) at Attach. A; BellSouth GALA II Supplemental App. A, Vol. 2A, Tab D, Supplemental Affidavit of Elizabeth Stockdale (BellSouth GALA II Stockdale Aff.) at 6, 9.

⁶ The Commission has summarized the relevant statutory framework in prior orders. See, e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, No. 01-1076 (D.C. Cir. Dec. 28, 2001); *Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC 3953, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*), *aff'd, AT&T Corp v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

⁷ BellSouth GALA I Application at 17; Georgia Commission GALA I Comments at 1.

met the competitive checklist set forth in section 271 of the 1996 Federal Telecommunications Act.”⁸

6. On April 20, 2001, BellSouth notified the Louisiana Commission of its intent to file an application to provide interLATA telecommunications services in Louisiana.⁹ In response, the Louisiana Commission initiated a proceeding, which was open to participation by all interested parties, to examine BellSouth’s compliance with the requirements of section 271.¹⁰ On September 19, 2001, the Louisiana Commission issued an order “endorses[ing] the application of BellSouth to the FCC . . . to provide interLATA service originating within the State of Louisiana,” and approving BellSouth’s SGAT.¹¹

7. BellSouth filed its initial application for section 271 authority for the states of Georgia and Louisiana (the BellSouth GALA I Application) on October 2, 2001 but later chose to withdraw it.¹² BellSouth filed another application for Georgia and Louisiana (BellSouth GALA II Application) on February 14, 2002. The BellSouth GALA II Application incorporates the material in the original application by reference to demonstrate compliance with the section 271 requirements. It also provides additional information concerning BellSouth’s provision of access to its OSS offerings. As in the prior application, the Georgia and Louisiana Commissions endorse BellSouth’s present application.¹³

8. The Department of Justice filed its recommendation on March 21, 2002.¹⁴ The Department of Justice recommends approval of BellSouth’s application for section 271 authority in Georgia and Louisiana, stating that:

BellSouth’s Supplemental Application demonstrates that it has made substantial progress in addressing issues previously identified by the Department. The

⁸ *Id.* See also Georgia Commission GALA I Comments at 9-11 (describing the Georgia Commission’s approval of BellSouth’s Statement of Generally Available Terms and Conditions (SGAT)).

⁹ BellSouth GALA I Application at 12; Louisiana Commission GALA I Comments at 10-11.

¹⁰ *Id.*

¹¹ BellSouth GALA I Application at 13; Louisiana Commission GALA I Comments at 12.

¹² This is BellSouth’s fourth application to the Commission for authorization to provide in-region, interLATA services in Louisiana and its second for Georgia. BellSouth previously applied for section 271 approval for Louisiana in November 1997, July 1998 and jointly for Georgia and Louisiana in October 2001. The Commission denied the first two applications and, as noted previously, BellSouth withdrew the third. See *BellSouth Louisiana Order*, 13 FCC Rcd 6245; *BellSouth Second Louisiana Order*, 13 FCC Rcd 20599; Letter from James G. Harralson, Vice President and Associate General Counsel, BellSouth, to Magalie Salas, Secretary, Federal Communications Commission, CC Docket No. 01-277 (filed December 20, 2001) (withdrawing BellSouth’s GALA I Application) (*BellSouth December 20 Ex Parte Letter*).

¹³ Georgia Commission GALA II Comments at 3, 32; Louisiana Commission GALA II Comments at 4.

¹⁴ Section 271 (d)(2)(A) requires us to give “substantial weight” to the Department’s evaluation.

Department recognizes that additional improvements in BellSouth's OSS have been identified and will be implemented under the direction of the Georgia and Louisiana PSCs, and that final completion of the metrics audit under the auspices of the Georgia PSC should further improve the accuracy and reliability of BellSouth's performance reports.¹⁵

While the Department of Justice supports approval of BellSouth's application, based on the current record, it noted its conclusions were "subject to the Commission's review of the concerns expressed in this Evaluation."¹⁶

III. PRIMARY ISSUES IN DISPUTE

9. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish checklist compliance with every checklist item. Rather, we rely on the legal and analytical precedent established in prior 271 orders, and we attach comprehensive appendices containing performance data and the statutory framework for evaluating section 271 applications.¹⁷ Our conclusions in this Order are based on performance data as reported in monthly performance reports reflecting service in the most recent months before filing (October 2001 through February 2002).¹⁸

10. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing whether the application qualifies for consideration under section 271(c)(1)(A) (Track A), the evidentiary case, and checklist item two (unbundled network elements, or UNEs). Next, we address the following checklist items: one (interconnection), four

¹⁵ Department of Justice Evaluation at 21.

¹⁶ *Id.* at 3. In particular, the Department of Justice expressed concern regarding BellSouth's consistency in adhering to change management principles, and its decision to make changes to the Service Order Accuracy metric without prior approval of the Georgia Commission or notice to competitive LECs. The Department of Justice also noted that the Commission should not rely solely on BellSouth's performance reports in reviewing competitive LEC complaints, until the Georgia Commission has completed its review of BellSouth's metrics, or until there is additional commercial experience with the reported metrics. *Id.* at 20.

¹⁷ Appendices B (Georgia Performance Data), C (Louisiana Performance Data), and D (Statutory Requirements). See *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, Memorandum Opinion and Order, 17 FCC Rcd 3300, Apps. B, C, and D (2002) (*Verizon Rhode Island Order*); *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719, Apps. B, C, and D (SWBT Arkansas/Missouri Order); *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, 17508-545, Apps. B and C (2001) (*Verizon Pennsylvania Order*).

¹⁸ We examine data through February 2002 because they describe performance that occurred before comments were due in this proceeding on March 4, 2002. See *SWBT Texas Order*, 15 FCC Rcd at 18372, para. 39.

(unbundled local loops), five (transport), six (switching), seven (E911/Operator Services/Directory Assistance) (OS/DA), eight (white pages), eleven (number portability), twelve (local dialing parity), thirteen (reciprocal compensation) and fourteen (resale). The remaining checklist items are discussed briefly. We find, based on our review of the evidence in the record, that BellSouth satisfies all the checklist requirements.

A. Compliance with Section 271(c)(1)(A)

11. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).¹⁹ To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."²⁰ The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."²¹ The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"²² which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.²³

1. Georgia

12. We conclude that BellSouth satisfies the requirements of Track A in Georgia. We base this decision on the interconnection agreements BellSouth has implemented with competing carriers in Georgia and the number of firms that provide local telephone exchange service, either exclusively or predominantly over their own facilities, to residential and business customers.²⁴ In

¹⁹ 47 U.S.C. § 271(d)(3)(A).

²⁰ *Id.*

²¹ *Id.*

²² *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

²³ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6257, para. 42; see also *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20585, para. 78 (1997) (*Ameritech Michigan Order*).

²⁴ BellSouth GALA II Stockdale Aff., Exh. ES-5 and ES-6 (*citing confidential information*); Georgia Commission GALA II Comments at 2. We note that a survey commissioned by the Georgia Commission found that 5 firms provide residential service over their own facilities and that 8 firms provide residential service by a combination of their own and leased BellSouth UNEs. This same survey found that 20 firms provide business services over their own facilities and 21 firms provide business services by a combination of their own and leased BellSouth UNEs. Georgia Commission GALA I Comments, Appendix A.

support of its Track A showing, BellSouth relies on interconnection agreements with AT&T (MediaOne Telecom, Teleport), MCImetro, and Mpower.²⁵ We find that each of these carriers serves more than a *de minimis* number of residential and business customers predominantly over its own facilities and represents an “actual commercial alternative” to BellSouth in Georgia.²⁶ Specifically, the record demonstrates that AT&T provides residential and business service to its customers over its own facilities, UNE-Platform (UNE-P) and UNE Loops.²⁷ MCImetro provides service to residential and business customers over their own facilities and UNE-P.²⁸ Mpower provides service to residential and business customers over UNE-Loops.²⁹

13. Two commenters assert that BellSouth overestimates the number of lines provided by competitors in Georgia.³⁰ Specifically, Sprint asserts that BellSouth’s methodology is overinclusive in that it captures high-speed data lines and that the level of competition is *de minimis*.³¹ In addition, AT&T argues that BellSouth’s market share estimates is inaccurate because it includes lines provided to Internet service providers.³² In response to Sprint, we note that our analysis does not rely on the lines that BellSouth attributes to Sprint.³³ As stated above, the record demonstrates that, even excluding Sprint’s lines, there are numerous carriers that provide voice services to more than a *de minimis* number of residential customers and business customers over their own facilities, UNE-Loops, and UNE-P. Similarly, in response to AT&T we note that even assuming that AT&T’s estimated market share is correct, we still find that more than a *de minimis* number of customers are served over competitive LEC facilities.

²⁵ BellSouth GALA I Application at 18-19.

²⁶ *SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

²⁷ BellSouth GALA II Stockdale Aff., Exh. ES-5 and ES-6 (*citing confidential information*).

²⁸ BellSouth GALA II Stockdale Aff., Exh. ES-5 and ES-6 (*citing confidential information*); Worldcom GALA I Comments at 14.

²⁹ BellSouth GALA II Stockdale Aff., Exh. ES-5 and ES-6 (*citing confidential information*).

³⁰ Sprint GALA II Comments at 11-13; US LEC/XO GALA II Comments at 53-54; AT&T GALA I Comments at 75; AT&T GALA I Comments App. Tab I, Declaration of Joseph Gillan (AT&T GALA I Gillan Decl.) at 17; El Paso et al GALA I Comments at 43.

³¹ Sprint GALA II Comments at 12.

³² AT&T estimates that facilities-based competitors have a 6.3% market share in Georgia. AT&T also asserts that BellSouth does not provide entrants access to the local network on equal terms and that this is demonstrated by the declining number of lines resold. As noted by the Department of Justice, however, competing LECs may be converting their resale lines to UNE-P lines. We note that the number of UNE-P lines increased significantly as the number of resold lines declined between July 2001 and December 2001. BellSouth GALA II Stockdale Aff. Exh. ES-5; BellSouth GALA I Application, App. A, Vol. 10, Tab V, Affidavit of Victor K. Wakeling (BellSouth GALA I Wakeling Aff.), Exh. VW-6, VW12; Department of Justice Evaluation GALA I at 10; AT&T GALA I Comments at 77; AT&T GALA I Gillan Decl. at 5-6, 12, 15.

³³ BellSouth includes the number of interconnection trunks between itself and each individual competitive LEC (including Sprint) in its estimation of the competitive LECs’ presence in the market. Our assessment of the market, however, does not employ these estimates.

Therefore, even if BellSouth's methodology inflates the total number of lines, as Sprint and AT&T suggest, we still find that there is an actual commercial alternative based on the sufficient number of voice customers served over competing LECs' own facilities.³⁴

14. US LEC/XO argue that there is a disparity between BellSouth's estimate of the competitive LECs' market share and the estimated competitive LECs' market share reported in the Commission's most recent Local Telephone Competition Report.³⁵ We note, however, that the market share reported in the Local Competition Report reflects market share for the entire state of Georgia rather than just BellSouth's territory, and does not indicate whether any specific competitor serves more than a *de minimis* number of customers.³⁶ Accordingly, it does not undermine our confidence in the accuracy of BellSouth's estimates. Moreover, as the D.C. Circuit confirmed in *Sprint v. FCC*, Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.³⁷ Accordingly, the applicant is not required to show that competitors have captured any particular market share. US LEC/XO argument, therefore, is irrelevant to our analysis under Track A.

2. Louisiana

15. We conclude that BellSouth demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with competing carriers in Louisiana and the numerous carriers providing facilities-based service to residential and business customers in this market.³⁸ In support of its Track A showing, BellSouth relies on interconnection agreements with AccessOne, Cox, and ITC^DeltaCom.³⁹ The record demonstrates that each of these carriers serves more than a *de minimis* number of residential and business customers via UNE-P or full-facilities lines.⁴⁰ Thus, we find that there is an "actual

³⁴ BellSouth GALA II Stockdale Aff. Exhs. ES-5 and ES-6 (*citing confidential information*).

³⁵ US LEC/XO GALA II Comments at 53-54.

³⁶ BellSouth's territory amounts to 83% of the Universal Service Funds lines in Georgia. *Statistics of Communications Common Carriers*, (released September 15, 2001), Table 5-1, at 227. Additionally, carriers with fewer than 10,000 local telephone lines in service in a state are not required to report those lines for purposes of the FCC Report. *Local Telephone Competition: Status as of June 30, 2001*, Common Carrier Bureau, Industry Analysis Division, February 2002, fn. 8 and Table 8.

³⁷ *Sprint v. FCC*, 274 F.3d at 553-54 (stating that "the statute imposes no volume requirements for satisfaction of Track A."); *see also Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

³⁸ The Louisiana Commission asserts that while various parties questioned the level of competition during BellSouth's third application before the Louisiana Commission, no party challenged BellSouth's compliance with Track A in that proceeding. Louisiana Commission GALA I Comments at 13-14.

³⁹ BellSouth GALA I Application at 19-20.

⁴⁰ BellSouth GALA II Stockdale Aff. Exh. ES-6 and ES-7 (*citing confidential information*). We note that the number of UNE-P lines has been increasing. BellSouth GALA II Stockdale Aff. Exh. ES-6, ES-7, BellSouth GALA I Wakeling Aff. Exh. VW-7 and VW-13.

commercial alternative” to BellSouth in Louisiana and that BellSouth satisfies the requirements of Track A in Louisiana. Some commenters challenge the accuracy of BellSouth’s estimate of the competitive LECs’ market share.⁴¹ As stated above, however, the actual market share is irrelevant to our Track A analysis,⁴² and these commenters have not otherwise countered BellSouth’s showing that it has interconnection agreements with competitors that serve more than a *de minimis* number of customers.

B. Evidentiary Case

16. As a threshold matter, we address challenges to the validity of the data submitted by BellSouth. As BellSouth’s data is important to its showing of compliance with several different checklist items, it is appropriate for us to dispose of this issue as a threshold matter before addressing compliance with each checklist item.⁴³ BellSouth has submitted performance metric data with its application as evidence of meeting its nondiscriminatory requirements under the checklist. These performance metrics measuring BellSouth’s performance in Georgia and Louisiana were calculated according to the business rules (the BellSouth Service Quality Measurement Plan or “SQM”) approved by the Georgia Commission.⁴⁴ The SQM was developed in an open, collaborative proceeding conducted by the Georgia Commission.⁴⁵ The Georgia

⁴¹ Sprint GALA II Comments at 17, US LEC/XO GALA II Comments at 11-12. AT&T GALA I Comments at 75; Sprint GALA I Comments at 11. AT&T estimates that facilities-based competitors have a 2.3% market share in Louisiana. AT&T GALA I Gillan Decl. at 15, para. 27.

⁴² See discussion above.

⁴³ We note that the Commission discussed the importance of data validity issues in the New York, Texas and Massachusetts Section 271 Orders. See *Verizon New York 271 Order*, 15 FCC Rcd at 3959, para. 11 (the monthly review by the New York Commission of Bell Atlantic’s raw data, the collaborative proceedings conducted by the New York Commission concerning the performance metrics, and the review by KPMG and the New York Commission of Bell Atlantic’s internal controls surrounding the data collection process, ensured that the performance data was accurate, consistent and meaningful); *SWBT Texas 271 Order*, 15 FCC Rcd at 18377-78, para. 57 (SWBT’s data had been subject to scrutiny and review by interested parties, to a large extent its accuracy had not been contested, and in those instances where it had been disputed, the Commission looked first to the results of data reconciliations between SWBT and competing carriers); *Verizon Massachusetts 271 Order*, 16 FCC Rcd at 9058-59, para. 129 (when performance metric data is challenged and has not been audited, competing carriers should be given access to their carrier-specific data, and to the underlying data used for any special studies of the BOC’s performance).

⁴⁴ BellSouth GALA I Application App. A, Vol. 9a, Affidavit of Alphonso J. Varner for Georgia (BellSouth GALA I Varner Georgia Aff.) at paras. 5-7. BellSouth explains that it used the Georgia SQM for the Louisiana performance metric data, with the Louisiana Commission’s approval, because the Louisiana SQM that was in effect when BellSouth filed its application with the Louisiana Commission lacked sufficient disaggregation to report on performance that the Commission has traditionally examined. BellSouth reports data to the Louisiana Commission using the current Louisiana SQM, which was developed in an open proceeding conducted by the Louisiana Commission. BellSouth GALA I Application App. A, Vol. 9a, Affidavit of Alphonso J. Varner for Louisiana (BellSouth GALA I Varner Louisiana Aff.) at paras. 5, 24-33.

⁴⁵ BellSouth GALA I Varner Georgia Aff. at paras. 8-22.

performance metric data has been subject to three audits ordered by the Georgia Commission, of which the first two are almost complete⁴⁶ and the third is still in progress.⁴⁷

17. Several commenters challenge the validity of the data provided by BellSouth. Specifically they claim that: a number of metrics were not calculated properly;⁴⁸ the metric data is not an accurate representation of BellSouth's performance;⁴⁹ BellSouth's metric data is not provided in a manner that allows competing carriers to readily verify whether BellSouth's performance is meeting state-established standards;⁵⁰ the pattern of restatements of the data by BellSouth and BellSouth's acknowledgements of problems with certain metrics mean that the data is not stable enough to be relied upon;⁵¹ BellSouth unilaterally changed the rules by which the metrics are calculated after the Georgia Commission had approved them;⁵² and the lack of a

⁴⁶ Two exceptions remain open for the first two audits. BellSouth GALA II Reply App., Volume 3, Tab I, Supplemental Reply Affidavit of Alphonso J. Varner for Georgia and Louisiana (BellSouth GALA II Varner Reply Aff.) at paras. 20-21; BellSouth GALA II Application App. A, Tab E, Supplemental Affidavit of Alphonso J. Varner for Georgia and Louisiana (BellSouth GALA II Varner Aff.) at paras. 49-51; BellSouth GALA II Varner Aff. at Ex. PM-13 (KPMG Interim Status Report). An "exception" is a problem with BellSouth's performance encountered by KPMG in the course of its audit and test, which KPMG was unable to resolve. BellSouth GALA I Application App. F, Volume 12a-c, Tab 76, BellSouth Telecommunications, Inc. OSS Evaluation - Georgia, Master Test Plan Final Report (MTP Final Report) and Supplemental Test Plan Final Report (STP Final Report) submitted by KPMG Consulting, March 20, 2001, at II-6.

⁴⁷ BellSouth GALA II Varner Aff. at paras. 28-62. Audit I, also known as Phase I, was ordered as part of the Master Test Plan in the May 20, 1999 order, and as part of the Supplemental Test Plan ordered in Jan. 2000. It reviewed the calculations of 42 metrics, which covered 256 submetrics. Audit II/Phase II was ordered in the June 6, 2000 order, for 60 metrics, covering 1178 submetrics. Audit III/Phase III was ordered in Jan. 16, 2001, auditing 75 metrics covering 2678 submetrics and BellSouth's performance plan, called SEEMS. BellSouth GALA I Varner Georgia Aff. at paras. 38-40; KPMG Interim Status Report. Each audit had 6 parts, covering for each audit: PMR 1, Data Collection and Storage; PMR 2, Standards and Definitions (metric conformity to the SQM); PMR 3, Change Management (how BellSouth managed changes to the metrics); PMR 4, Data Integrity (checking the integrity of the data as it moved from the Legacy/source systems to its database containing its raw data called PMAP); PMR 5, Replication of SQM and 271 charts (replicating metric calculations based on PMAP data); PMR 6, Statistical Analysis (checking statistical tests used for SQM and SEEMS). Audit III also included PMR 7, Enforcement Review of SEEMS (checking the calculations of payments for the SEEMS plan). KPMG Interim Status Report.

⁴⁸ AT&T GALA I Comments App. Tab E, Declaration of Cheryl Bursh and Sharon Norris at paras. 36-113 (AT&T GALA I Bursh/Norris Decl.); AT&T GALA II Comments App. Tab E, Declaration of Cheryl Bursh and Sharon Norris at paras. 72-94 (AT&T GALA II Bursh/Norris Decl.); Birch GALA II Comments at 6-8; WorldCom GALA II Comments App. Tab A, Declaration of Sherry Lichtenberg at paras. 64-66 (WorldCom GALA II Lichtenberg Decl.); Network Telephone Corp. GALA II Comments at 1-3; Covad GALA I Comments at 35-43.

⁴⁹ AT&T GALA II Comments App. Tab A, Declaration of Robert M. Bell (AT&T GALA II Bell Decl.); AT&T GALA II Bursh/Norris Decl. at paras. 95-102; Birch GALA II Comments at 9-11; Birch GALA II Reply Comments at 4-12.

⁵⁰ Mpower GALA II Comments at 17-18.

⁵¹ AT&T GALA I Bursh/Norris Decl. at paras. 5, 90-93, 101-102; AT&T GALA II Bursh/Norris Decl. at paras. 14-23.

⁵² AT&T GALA I Bursh/Norris Decl. at paras. 5, 41-44, 50-69; AT&T GALA II Bursh/Norris Decl. at para. 106; Birch GALA II Comments at 11-13.

completed audit, and the problems found by KPMG in its Georgia and Florida audits of BellSouth's metric data, demonstrate that the data is unreliable.⁵³ In its evaluation, the Department of Justice expressed concern about the reliability and accuracy of BellSouth's data in certain respects.⁵⁴ While the Department observed that the stability and accuracy of BellSouth's performance data was improving, it cautioned the Commission that when faced with "credible complaints" regarding BellSouth checklist compliance, the Commission should not rely "solely" on BellSouth performance reports, until the audits are completed or there is additional commercial experience with the metrics.⁵⁵

18. BellSouth argues that its performance metrics were developed in extensive, open proceedings and that its internal and external controls and checks ensure that its data continue to be reliable. Specifically, BellSouth has adopted internal quality assurance controls, including automatic checks on the data integrity and calculations, as well as manual data validation processes to validate both the software code used and the application of the business rules, both of which serve to check that the results are reasonable.⁵⁶ BellSouth also points out the data has been and continues to be subject to independent third-party audits, and the Georgia and Louisiana Commissions will continue to oversee annual third-party audits of its performance metric reports for the next four years.⁵⁷ In addition, the Georgia and Louisiana Commissions are conducting regular reviews of the performance metrics, during which competing LECs may raise data reliability concerns. And, although the Georgia Commission has established a process for competitive LECs to bring concerns about data integrity to them, no competitive LEC has done so.⁵⁸ Moreover, BellSouth has provided competing carriers their carrier-specific data, and gives them access to most of the raw data it uses to calculate its metrics, in a data warehouse it calls the

⁵³ AT&T GALA II Bursh/Norris Decl. at paras. 24-71.

⁵⁴ Department of Justice GALA II Evaluation at 18. The Department considers performance measures to be reliable if the measures are "meaningful, accurate and reproducible." Department of Justice GALA I Evaluation at 31. In its previous comments, the Department noted a large number of software coding errors admitted to by BellSouth, and the failure of BellSouth to correct all of these errors, with some corrections introducing new coding errors into the software. The Department discussed problems with metrics concerning flow-through, trouble report rates for xDSL and line-sharing, FOC and Reject Response Completeness, Reject Interval, FOC Timeliness, LNP standalone, Completion Notice Interval, Pre-Ordering Average Response Time, and Acknowledgement Message Timeliness. Department of Justice GALA I Evaluation at 32-33. The Department was also concerned about the validity of a number of the measures, which may not provide a meaningful depiction of BellSouth's performance due to flaws in the definitions of some of the metrics. The Department cited the metrics concerning OSS availability, rejected orders, the flow-through rate, jeopardy notices, hot cut timeliness, hot cut outages rates, order completion interval and total service order cycle time, and trunk group performance. Department of Justice GALA I Evaluation at 35-37. These specific comments were not mentioned in its evaluation of BellSouth's instant application.

⁵⁵ Department of Justice GALA II Evaluation at 20.

⁵⁶ BellSouth GALA II Varner Aff. at paras. 8-10.

⁵⁷ BellSouth GALA II Varner Aff. at paras. 11, 13; *see also* Louisiana Commission GALA II Reply at 8-9; Georgia Commission GALA II Comment at 30-31.

⁵⁸ BellSouth GALA II Varner Aff. at paras. 14-15; BellSouth GALA II Varner Reply Aff. at paras. 46-47; *see also* Georgia Commission GALA II Comment at 30-31; Georgia Commission GALA II Reply at 5.

Performance Measurement Analysis Platform or PMAP, containing 2.5 Terabytes of data.⁵⁹ BellSouth also states it is ready to engage in data reconciliations with any requesting carrier.⁶⁰ BellSouth maintains that these extensive safeguards will ensure that BellSouth's data will remain consistently meaningful and reliable.⁶¹ BellSouth also points out that its data is now stable, with a low rate of repostings in recent months.⁶² BellSouth has provided us with an interim status report from KPMG detailing the current status of all three of KPMG's audits, what exceptions are outstanding on the audits, and the nature of the problems found.⁶³ BellSouth has also provided extensive evidence to demonstrate that the exceptions generated on its audits did not suggest a material difference on important metrics that the Commission traditionally examines.⁶⁴

19. In view of the extensive third-party auditing, the internal and external data controls, the open and collaborative nature of metric workshops in Georgia and Louisiana,⁶⁵ the

⁵⁹ BellSouth GALA I Varner Georgia Aff. at paras. 23-29; BellSouth GALA II Varner Aff. at para. 12. Some metrics are calculated using raw data stored in other systems. BellSouth also provides detailed information about the calculations it uses in its *PMAP Raw Data Users Manual*. BellSouth believes that no other ILEC provides such detailed instructions and easy access to the raw data. BellSouth GALA I Varner Georgia Aff. at para. 24.

⁶⁰ Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth Corporation, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed March 27, 2002) at 1-2 (BellSouth March 27 *Ex Parte* Letter).

⁶¹ BellSouth GALA II Varner Aff. at para. 17.

⁶² BellSouth reports that it reposted (revised published data) only 3.2% of its key measures for Georgia's MSS reports, and only 0.43% for Louisiana's MSS reports, for May through December. Of those revisions, only 0.53% for Georgia, and 0.05% for Louisiana, necessitated a change in the parity evaluation, using the SQM-established standard. BellSouth GALA II Varner Aff. at paras. 18-22. There were no repostings for the last four months of data submitted with the application, September through December. BellSouth GALA II Varner Aff. at para. 25. BellSouth claims this was because of greater stability of the data and the calculations. BellSouth GALA II Varner Aff. at paras. 18-27; BellSouth GALA II Varner Reply Aff. at paras. 5-19. Some commenters allege, however, that BellSouth has made corrections to the underlying data in PMAP but did not appropriately update its metric reports, and that some of the data in the reports is incorrect and should be restated. AT&T GALA II Bursh/Norris Decl at paras. 14-23 and Attach. 1; Network Telephone GALA II Comments at 2-3, Exhs. 1, 2. The Department of Justice expressed concern about relying on BellSouth's reduced number of repostings as proof that the data is reliable. Department of Justice GALA II Evaluation at 18-19 and nn. 84-85 (reduced number of restatements is encouraging, but in light of commenters allegations, the current upgrade of the PMAP, and BellSouth's exercise of discretion in restating data, this is not proof that the problems have been resolved or that the data are accurate). Consistent with the Department of Justice's finding, while we consider the lack of repostings encouraging, we do not rely on this evidence for our determination that BellSouth's data is reliable and accurate, because we are unable to determine if this was due to greater stability of the data.

⁶³ KPMG Interim Status Report.

⁶⁴ BellSouth GALA II Varner Aff. at paras. 28-62 and Exhs. PM-13, PM-14, PM-15, PM-16, PM-17, PM-18, PM-19; KPMG Interim Status Report; BellSouth GALA II Varner Reply Aff. at paras. 20-40 and Exhs. PM-6, PM-7, PM-8, PM-9.

⁶⁵ Georgia Commission GALA II Comment at 30-31; Louisiana Commission GALA II Reply at 8-9. We commend the extensive work undertaken by the Georgia and Louisiana Commissions for their work in developing a set of performance metrics, and for instituting and overseeing workshops and a set of audits of BellSouth's data. We (continued....)

availability of the raw performance data, BellSouth's readiness to engage in data reconciliations, and the oversight of the Georgia and Louisiana Commissions, we are persuaded that, as a general matter, BellSouth's performance metric data is accurate, reliable, and useful. We furthermore cannot find general allegations of problems with the reliability of BellSouth's data provide sufficient reason to reject BellSouth's application. BellSouth's data has been subject to a series of audits overseen by the state commissions, and the previous audits have demonstrated that almost all of the data is reliable and accurate.⁶⁶ While the current audit has generated exceptions, the record demonstrates, through BellSouth's analysis, the interim status report from KPMG, and the comments by the state commissions, that the problems identified have had, for the most part, only a small impact on the data presented to us.⁶⁷ We recognize that BellSouth's data continues to be subjected to third-party audit, but we cannot as a general matter insist that all audits must be completed at the time a section 271 application is filed at the Commission.⁶⁸ Moreover, we note that the data has shown greater stability in recent months, with fewer metrics identified by BellSouth as having significant or fatal flaws.⁶⁹ BellSouth has also undertaken to settle disputes concerning its reported performance metric data with competing carriers through data reconciliations, and provide carrier-specific reports to competing carriers.⁷⁰ In addition,

(Continued from previous page)

believe that the hard work of these state commissions in developing a more effective set of performance metrics, and ensuring its reliability and accuracy, will serve to establish and sustain the development of a more robustly competitive and dynamic local communications market in their states.

⁶⁶ There were two exceptions remaining from audits I and II, which BellSouth demonstrated had only a minor impact on the metrics we are most concerned about. BellSouth GALA II Varner Aff. at paras. 49-51 and Exhs. PM-13, PM-14, PM-15, PM-16, PM-17, PM-18, PM-19; KPMG Interim Status Report; BellSouth GALA II Varner Reply Aff. at paras. 20-40 and Exhs. PM-6, PM-7, PM-8, PM-9.

⁶⁷ BellSouth GALA II Varner Aff. at paras. 49-51 and Exhs. PM-13, PM-14, PM-15, PM-16, PM-17, PM-18, PM-19; KPMG Interim Status Report; BellSouth GALA II Varner Reply Aff. at paras. 20-40 and Exhs. PM-6, PM-7, PM-8, PM-9; Georgia Commission GALA II Comment at 28-31; Louisiana Commission GALA II Reply at 8-9.

⁶⁸ Doing so would impose a considerable burden on applicants, particularly where the applicants' data is otherwise reliable. Indeed, the Commission has not required a completed audit of the data in past section 271 orders, but has said that it will give greater weight to evidence that has been audited, or has been made available to competing carriers, and for which a data reconciliation has been conducted when questions about the accuracy of the data have been raised. *Texas 271 Order*, 15 FCC Rcd at 18377-78, para. 57; *Massachusetts 271 Order*, 16 FCC Rcd at 9058-59, para. 129. The results of any completed audits will be very useful in our assessment of the reliability of the data. If an audit is underway, an interim status report from the third party conducting the audit that states how much of the audit is complete, what problems or exceptions have been found, and the nature and size of those problems, also weigh heavily in our analysis. We note that the existence of exceptions does not necessarily mean the performance data in general should be considered unreliable, if the magnitude of the discrepancies are small, or the metrics affected are not critical to our analysis.

⁶⁹ BellSouth GALA II Varner Aff. at paras. 18-27, 63-82; *see note 62 supra*. BellSouth says it has fixed problems identified in its GALA I application with the metrics FOC and Reject Completeness, Flow Through, Customer Trouble Report Rate for xDSL and line sharing, % Provisioning Troubles Within 30 Days, and FOC Timeliness and Reject Interval Timeliness. BellSouth GALA II Varner Aff. at para. 71.

⁷⁰ BellSouth GALA II Varner Aff. at para. 12; BellSouth March 27 *Ex Parte* at 1-2. NewSouth says it has found BellSouth's data to be consistent with its own data. NewSouth GALA II comments at 3-4.

BellSouth has made available to competing carriers and regulators most of the raw data it uses for its calculations in its data warehouse called PMAP.⁷¹

20. For all these reasons, we find that BellSouth's data is sufficiently reliable for purposes of conducting our section 271 analysis.⁷² Consistent with the recommendation of the Department of Justice, however, where specific credible challenges have been made to the BellSouth data, particularly with respect to checklist items 1, 2 and 4, we will exercise our discretion to give that data lesser weight, and discussed more fully below, look to other evidence to conclude that BellSouth has met its obligations under section 271.⁷³ We note that access to complete and accurate data will be important to the Commission's assessment of BellSouth's future performance. As discussed below, BellSouth is required to report to the Commission all Georgia and Louisiana carrier-to-carrier performance metrics results and Performance Assurance Plan monthly reports. Failure to provide complete and accurate data to the Commission could result in enforcement action.

C. Checklist Item 2 – Unbundled Network Elements

1. Pricing of Network Elements

21. Checklist item two of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.⁷⁴ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”⁷⁵ Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.⁷⁶ Pursuant to this statutory mandate, the

⁷¹ BellSouth GALA I Varner Georgia Aff. at paras. 23-29. We note that no other BOC has made its raw data routinely available, and commend BellSouth for opening up its raw data to competing carriers and regulators.

⁷² We note that, our approval of this application is based upon the evidence before us, including the metric data submitted. If new evidence becomes available, such as exceptions found by KPMG as part of their audit, that demonstrate that there are significant problems with the metric data, this may have a significant impact on our evaluation of the metric evidence in future 271 applications. In addition, if such new evidence demonstrates that BellSouth is not meeting its section 271 obligations in Georgia or Louisiana, this may constitute grounds for an enforcement action under section 271(d)(6).

⁷³ Department of Justice GALA II Evaluation at 20.

⁷⁴ 47 U.S.C. § 271(B)(ii).

⁷⁵ *Id.* § 251(c)(3).

⁷⁶ *Id.* § 252(d)(1).

Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements.⁷⁷

22. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996 and vacated them in 1997,⁷⁸ the U.S. Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.⁷⁹ On remand from the Supreme Court, the Eighth Circuit concluded that, while a forward-looking cost methodology is an acceptable method for determining costs, certain specific Commission pricing rules were contrary to Congressional intent.⁸⁰ The Eighth Circuit stayed the issuance of its mandate pending review by the Supreme Court.⁸¹ The Supreme Court on May 13, 2002, upheld the Commission's forward-looking pricing methodology in determining costs of UNEs and "reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act."⁸² Accordingly, the Commission's rules remain in effect.

23. This is BellSouth's first approved 271 application, and commenters criticize many inputs of BellSouth's various cost models for Georgia and Louisiana. Because we have not previously approved a section 271 application of BellSouth, we conduct a stand-alone analysis of BellSouth's rates, in which we review the rates from the "bottom up" to ensure they comply with

⁷⁷ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-46, paras. 674-79 (1996) (*Local Competition Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501 *et seq.* See also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 (1999) (*Line Sharing Order*), *pets. for review pending sub nom. USTA, et al. v. FCC*, D.C. Cir. No. 00-1012 and consolidated cases (filed Jan. 18, 2000) (concluding that states should set the prices for line sharing as a new network element in the same manner as states set prices for other UNEs).

⁷⁸ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997).

⁷⁹ *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. The Court determined that section 251(d) provides evidence of an express jurisdictional grant by requiring that "the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The pricing provisions implemented under the Commission's rulemaking authority, according to the Court, do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "it is the States that will apply those standards and implement that methodology, determining the concrete result." *Id.*

⁸⁰ *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications, Inc. v. FCC*, 531 U.S. 1124 (2001), argued October 10, 2001.

⁸¹ *Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Sept. 25, 2000).

⁸² *Verizon v. FCC*, Nos. 00-511, 00-555, 00-587, 00-590, and 00-602, 2002 WL 970643 at *22 (Sup. Ct. May 13, 2002).